



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

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IN REPLY REFER TO:
Tribal Government Services - TR



MAR - 8 1983

Propose co:
for:
1. Chief
2. Solicitor
3. Legislative
Committee

Mr. George Tallchief
Principal Chief, Osage Tribal Council
Pawhuska, Oklahoma 74056

Dear Mr. Tallchief:

Thank you for your letter of January 2 relative to the Indian Preference Regulations, 25 CFR 259, which were revised July 17, 1981. That revision extended Indian preference to Osage persons of at least one-quarter degree Indian blood for three years or until the Osage Tribe has formally organized. You ask what our definition of "has formally organized" is since the Osage Tribal Council contends that it is formally organized pursuant to the Act of June 28, 1906.

The 1906 act only describes the tribe's officers and their duties, and does not constitute formal organization. Moreover, the United States Court of Appeals, Tenth Circuit, held in *Logan v. Andrus* that the validity of the 1881 Osage Constitution had not been adjudicated, contrary to the finding of the District Court. The validity of the 1881 Osage Constitution will have to be decided by the court.

We define formally organized to mean the adoption by all members of the tribe of a formal governing document which describes the full manner in which the tribe governs itself and includes a full definition of who its members are. That then brings us to the next question, who are the members of the Osage Tribe? The 1906 act closed the membership roll of the Osage Nation and made it final. Because Congress exercised its plenary power to control membership in Indian tribes and restricted the membership of the Osage Tribe to those persons whose names appear on the 1906 roll as approved by the Secretary of the Interior on April 11, 1908, only an Act of Congress can alter or redefine eligibility in the Osage Tribe. *Ickes v. Pattison*, 80 Fed. 2d 705, certiorari denied, 35 S. Ct. 565, held that persons whose names do not appear on the 1906 final roll are not members of the Osage Tribe. Therefore, the Osage Tribal Council does not have the authority to define membership in the Osage Tribe.

Since there are less than 200 original allottees now living, all aged 77 or more, we believe it would be in the best interest of the tribe if the tribal council and the Bureau of Indian Affairs would compromise on the membership issue and jointly support corrective legislation. We stand ready to meet you half way on this vital issue.

Sincerely,

/s/ John W. Fritz

Deputy Assistant Secretary -
Indian Affairs (Operations)

Exhibit I